REMARKS

Initially, Applicant most respectfully requests the courtesy of a telephonic interview with the Examiner and Applicant's undersigned representative, so that prosecution of this application may be expedited. Applicant would like to work with the Examiner to facilitate efficient prosecution of the application. Therefore, it would be most appreciated if the Examiner would telephone the undersigned to discuss this, prior to issuing another Office Action.

New claim 41 has been added to more particularly point out and distinctly claim the invention. Claims 11, 12, 22, 23 and 24 have been amended to more clearly define the inventions.

The Office Action raises, on page 3, several "observations" regarding the application, although these do not appear to be rejections of the claims. It is possible that these points may be resolved during a telephone interview. However, these points will be addressed at such time that a rejection is made. However, with respect to the statement in the Office Action, on page 3, lines 4-6, with respect to claim 15 and claim 11, Applicant wishes to point out that claim 11, which recites the broader "a tetrahalomethane" is further limited by claim 15, which sets forth specific tetrahalomethanes. According to the inventor, the term "heterocycle" may be aromatic or nonaromatic. Applicant does not agree with the assertion that there is new matter, and points, for example, to page 8 for support for examples of the terms given.

The restriction requirement set forth in the Office Action alleges that the 39 claims have such distinctly different technical features that the inventions defined by the claims fall into 342

allegedly distinct groups. While Applicant acknowledges with appreciation the significant time that arriving at such a requirement must have required, Applicant most respectfully requests that this most onerous requirement be reconsidered and withdrawn. Applicant acknowledges that restriction practice may be necessary in order for the Patent Office to meet its duty of adequately examining applications in view of the resources obtained from the applicants' filing fees. However, as discussed below, Applicant believes that the restriction requirement is not supportable under the relevant laws and regulations, and that the Office Action has not met the burdens required by same.

Therefore, the restriction requirement is most respectfully traversed. In order to be fully responsive, Applicant provisionally elects to prosecute the claims of Group LXXI (Group 71), as best as Applicant understands how the Office Action defines this group. This group is believed to encompass claims 11-16 and 18-22, wherein X is cis and R1 or R2 is O-Q.

As recognized in the Office Action, the standard to apply in determining whether all of the claims should be examined together is whether there is unity of invention. The primary consideration for establishing unity of invention is that the claims are entitled to be examined in a single application if the claims are so linked together as to form a single general inventive concept, premised on the concept of a common feature (often referred to as a special technical feature) that can be present in multiple inventions within a single application. Provided that the same or corresponding common feature is found in each claim, and that the common feature makes a contribution over the prior art, the claims comply with the requirement for unity of

invention. Therefore, despite the fact that there could be multiple inventions (such as product and process claims) within a single application, under the unity of invention requirements, if there is special technical feature common to the inventions, they may properly be examined together, without a requirement for restriction.

The Office Action, appears to take the position that the claims define numerous inventions (342 inventions), all of which fail to relate to a single general inventive concept under PCT Rule 13.1. The Office Action contends that the 342 inventions lack the same or a corresponding special technical feature. The points raised in the Office Action have been most carefully considered, but Applicant must respond by emphasizing that the inventions as set forth in the claims all possess unity of invention, that is, the inventions do indeed have a special technical feature which links all the groups. All of the claims define processes for producing certain combretatstatin A-4 compounds, the compounds themselves, and methods for using the compounds by administering them. These claims are linked by the single concept, that is, that these are novel, particularly defined combretastatin salts and methods for synthesis thereof. This is a special technical feature or concept which is sufficient to link all the groups.

Applicant's belief that the restriction requirement is not proper can be illustrated with respect to claim 11. The Office Action places claim 11 in at least 140 different groups, on the grounds that the allegedly different inventions of each of those are "different processes for preparing different final products using different catalysts, solvents and reagents. The catalysts, the reagents and the reaction condition are all different and there is no special technical feature

which links all the groups." In response, Applicant argues that with respect to claim 11, in fact there is a special technical feature linking all the groups, namely a process for preparing the compound of formula II, and thus produced by the method claim 11 are particularly defined combretastatin A-4 derivatives, having the same basic structure. Moreover, the starting material, the catalysts and the reagents are identical or similar. It is simply not understood why the Office Action alleges that there is no linking special technical feature. Applicant traverses the allegation in the Office Action that some of compounds being produced are already known, and so the claimed processes do not add any special technical feature. Claimed are novel and unobvious synthesis methods, and novel and unobvious compounds. The processes of the invention and the compounds produced indeed do have the special technical feature of being combretastatin A-4 prodrugs or processes for making same.

Moreover, although the unity of invention standard applies, the Office Action has not even met the stricter burden set forth in MPEP Section 808.02, namely that there has been no *prima facie* showing of a serious burden of examining the claims without restriction. The Office Action has failed to demonstrate that the allegedly distinct inventions (1) are separately classified, (2) if classified together, have a separate status in the art; or (3) require a different field of search. Further, even if a different field of search were to be required, it must also be demonstrated that the search would place this in such a large number of different search areas as to present an onerous burden to the Examiner.

In this regard, it is notable that the Office Action does not contain any indication of why

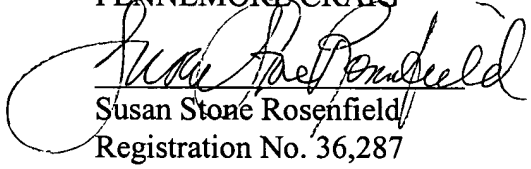
this would be a burden to search all of the allegedly non-unitary inventions, and makes no mention of the classification of any of the allegedly distinct inventions.

As noted above, a telephonic interview with the Examiner is most earnestly solicited, in order to more efficiently prosecute the application. The undersigned may be reached at the phone number set forth below, to arrange up an interview time that would be convenient for the Examiner.

Dated: July 12, 2004

Respectfully submitted,

FENNEMORE CRAIG



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I hereby certify that this paper and any documents referred to herein are being deposited on the date indicated above with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 CFR § 1.10, postage prepaid and addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Louis A. Lofredo, Legal Assistant

7-12-04
Date of Signature